

REMARKS

Claims 1, 3-7, 9-13, and 23-33 are pending in this application. Because the number of pending claims still remains the same – 22 total – no additional fees are believed to be due at this time. Claim 1 has been amended to incorporate the limitations of dependent Claims 2 and 8, Claims 2 and 8 have been canceled, and Claim 9 has been amended to depend from Claim 1 rather than Claim 8. Claim 13 has been rewritten in independent form, as suggested by Examiner. By this amendment, previously-withdrawn Claims 14-22 have been canceled. Claims 23-33, which mirror original Claims 2-12, have been added as claims dependent upon Claim 13. Applicants respectfully request reconsideration, withdrawal of all claim rejections and objections, and allowance of all remaining claims.

Claim Rejections – 35 § U.S.C. 102

The Examiner states on page 2 of the Office Action mailed on January 11, 2006:

Claims 1-4, 6-8 and 10-12 are rejected under 35 USC 102(b) as being anticipated by Nordin '150.

There is disclosed in Nordin an injection device comprising: a filling head 16 having a plurality of spouts 24 and a spout cap 90; a platen 26 having a plurality of spout channels 32, 36 through which the plurality of spouts can pass, wherein each one of the plurality of spouts is vertically aligned with one of the plurality of spout channels, and including a depression mold 28; and a holding apparatus 42 disposed above the platen and including a header 44 and a plurality of stems 46.

Applicants respectfully traverse the rejection of claims 1-4, 6-8, and 10-12 (of which, only claims 1, 3-4, 6-7, and 10-12 remain) under 35 USC § 102. As discussed below, Nordin fails to teach each and every element of the rejected claims as amended. Such rejection under §102 for anticipation requires that the single reference teach each and every element or step of the rejected claim. *See Atlas Powder v. E.I. DuPont*, 750 F.2d 1569 (224 USPQ 409) (Fed. Cir. 1984); *See also* MPEP § 2131.01 (“A claim is anticipated only if each and every element as set

forth in the claim is found, either expressly or inherently described, in a single prior art reference”). Examiner’s rejections under §102 fail to meet this test.

Applicants’ Claim 1, as amended, is directed to a multi-port, bottom-filling injection device comprising, in particular: “a filling head having a plurality of spouts, wherein said filling head further comprises a spout cap, said spouts are inextensible and fixedly attached to the spout cap, and said spout cap distributes a flow of filling among the spouts;” and “a platen having a plurality of spout channels . . . wherein said platen has a depression mold that is complementary to the shape of said chambered food item, such that said chambered food item can be snugly seated into the depression mold.” Nordin, however, does not disclose such a device. Nordin’s meat-pickling device does not have a plurality of spouts that are **inextensible and fixedly attached** to a spout cap, as required in Applicants’ device. Rather, Nordin states in column 1, lines 60-65 (with emphasis added) that “each needle is **yieldably mounted** for retraction within the manifold so that its feed movement may be arrested in the event it encounters a bone or the like while the remaining needles may continue their penetrating movement.” Nordin also states in column 2, lines 13-17 (with emphasis added) that “a further object is to provide a multiple-needle injection apparatus as set forth wherein different needles of the plurality of injection needles are **relatively movable to penetrate the meat to different depths.**” Moreover, Nordin’s device does not teach the combination of the above-mentioned elements and a platen with a depression mold that is **complementary to the shape of the product to be pierced**, as required in Applicants’ device. Nordin therefore fails to teach each and every element of Applicants’ independent Claim 1 and its dependent claims, Claims 3-4, 6-7, and 10-12.

Regarding Claim 3, Nordin does not teach the multi-port, bottom-filling injection device of Claim 1 wherein each one of the plurality of spouts has an elongate, cylindrical midsection and a tapered injection tip.

Regarding Claim 4, Nordin does not teach the multi-port, bottom-filling injection device of Claim 1 wherein each one of the plurality of spouts has a sharp end.

Regarding Claim 6, Nordin does not teach the multi-port, bottom-filling injection device of Claim 1 wherein each one of the plurality of spouts has at least one spout-tip opening on its side near its terminal end.

Regarding Claim 7, Nordin does not teach the multi-port, bottom-filling injection device of Claim 1 wherein the filling head further comprises a positive shut-off mechanism for shutting off a flow of filling to the plurality of spouts.

Regarding Claim 10, Nordin does not teach the multi-port, bottom-filling injection device of Claim 1 wherein each one of the plurality of spout channels is wider than the diameter of each one of the plurality of spouts.

Regarding Claim 11, Nordin does not teach the multi-port, bottom-filling injection device of Claim 1 wherein the plurality of spout channels can accommodate several spout sizes and arrangements.

Regarding Claim 12, Nordin does not teach the multi-port, bottom-filling injection device of Claim 1 wherein the holding apparatus comprises a header and a plurality of stems attached to the header.

In light of the above, Applicant(s) respectfully request(s) that Examiner withdraw the rejection of Claims 1, 3-4, 6-7, and 10-12 under 35 USC § 102.

Claim Rejections – 35 U.S.C. § 103

The Examiner states on page 3 of the Office Action mailed on January 11, 2006:

Claim 5 is rejected under 35 USC 103(a) as being unpatentable over Nordin '150 in view of Higashimoto.

It would have been obvious to one skilled in the art to provide the spouts of Nordin with an opening at their terminal ends as taught by Higashimoto, in order to ensure a vertical delivery of an injection material.

Claim 9 is rejected under 35 USC 103(a) as being unpatentable over Nordin.

In regards to the use of a five-pointed star shaped depression, such is an obvious matter of design choice which is dependent upon the item into which an injection material is being placed. It would have been obvious to one skilled in the art to construct the depression of such a shape.

This rejection is respectfully traversed. Neither Nordin nor Higashimoto, alone or in combination, discloses or suggests the invention claimed. Section 706.02(j) of the MPEP states that “[t]o establish a *prima facie* case of obviousness . . . the prior art reference (or references when combined) must teach or suggest all the claim limitations.” Furthermore, there is no suggestion or incentive to combine the references. As stated in Section 706.02(j) of the MPEP, “there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.”

In addition, non-analogous art cannot be used to establish obviousness. *See* MPEP § 2141.01(a) (explaining that “in order to rely on a reference as a basis for rejection of an applicant’s invention, the reference must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.”) Both Nordin and Higashimoto relate to the treatment and curing of meats and meat products. In particular, the two references disclose meat-pickling devices that inject curing and/or pickling solutions, which generally are aqueous, non-compressible solutions. In contrast, Applicants’ invention relates to confectionery: more specifically, it involves a pastry-filling apparatus capable of filling delicate, hollow-chambered pastries with compressible, easily-damaged fillings. The non-compressible, pickle-solution filling processes and devices of Nordin and

Higashimoto are physically rough and brutish (due to the toughness of meat products, especially those containing bone) compared to the processes and devices used in confectionery to fill pastries with creamy, jelled, and/or fluffy filling. Meat-curing and meat-pickling technology is inapplicable to confectionery technology, as the physical goals and operating conditions are dramatically different. A major goal in meat-curing, for example, is to achieve extensive tissue penetration and diffusion, whereas a major goal in producing pastries is to present and preserve delicate, finer features for the consumer's decadent delight. Moreover, many of the fillings used in pastries are compressible-fluids, which are easily damaged if extreme temperatures and/or pressures are applied. Meat-curing and meat-pickling, however, utilizes non-compressible, aqueous solutions, such as a salt solution (or brine). As the two references are clearly non-analogous art, they cannot properly be combined to establish obviousness.

Nordin, in fact, teaches away from Applicant's invention. If Nordin's teachings regarding the handling of non-compressible fluids were applied to injecting compressible fluids into hollow pastries, the compressible fluids would wreak havoc in the product-filling process. Note that Nordin teaches in column 5, lines 71-75, "There is no pressure on the injection fluid during the period of needle removal by downward movement of chamber 16. Accordingly, since the needles are upwardly disposed, there is little leakage of fluid while openings are exposed. . . . [and] loss of treating fluid is negligible." Applicants, however, clearly teach that compressible fluids will not behave as conveniently as non-compressible fluids. In paragraph 35 of Applicants' Specification, Applicants explain that "Compressible fillings sometimes continue to flow out of the open ends of the spouts 122 even after the pumping force is stopped because the filling, which compresses during the pumping phase, decompresses and expands after the pumping force is stopped. As it expands, it has nowhere to go but out the open ends of the spouts 122." Applicants continue, "This post-injection filling flow can contaminate the device

components and accumulate undesirably. Thus, a positive shut-off mechanism can dramatically reduce the amount of post-injection filling flow from the spouts 122.” Another suggestion that Applicants give regarding compressible fluids can be found in paragraph 51, beginning on page 23, line 21: “Although not necessary, it is desirable to wait a short period of time after the pumping has ceased before retracting the spouts 522 from the doughnuts 540. . . . This time delay compensates for any time delay between the instant pumping ceases and the instant filling stops flowing out of the spouts 522.” The Applicants offer yet another embodiment to compensate for the special handling characteristics required for compressible-fluid fillings: “In the preferred embodiment, however, a rotating cam within a three-port valve is used to control the timing of . . . 3) when the piston draws a small amount of filling from the filling head supply tube in order to prevent filling from dripping out of the spout ends when the spouts are not injected within a food item.” *See Applicants’ Specification* at paragraph 52. There is no suggestion whatsoever in Nordin or Higashimoto of applying meat-curing injection technology to the art of filling hollow-chambered pastries with compressible-fluid fillings. Section 2143.01 of the MPEP mandates that “[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (Patentee taught the device required rigidity for operation, whereas the claimed invention required resiliency).” Thus, one of ordinary skill in the art would not be motivated to make the changes proposed by the Examiner, as Nordin teaches away from Applicants’ invention.

In light of the above, Applicant(s) respectfully request(s) that Examiner withdraw the rejection of Claims 5 and 9 under 35 U.S.C. § 103.

Allowable Subject Matter

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As suggested by Examiner, Applicants have rewritten Claim 13 in independent form including all limitations of base claim 1. In addition, Applicants have added new Claims 23-33 depending from Claim 13 as amended, which new claims mirror the original, dependent Claims 2-12. Applicants therefore request allowance of Claim 13 and dependent Claims 23-33.

CONCLUSION

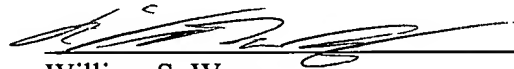
In light of the amendments and/or the arguments made by Applicants above, Applicants submit that all existing claims are now in a condition for allowance. Applicants respectfully request that Examiner withdraw all objections and rejections with regard to the above-referenced claims in reliance on one or more of the grounds submitted by Applicants.

If there are any outstanding issues that the Examiner feels may be resolved by way of telephone conference, the Examiner is invited to call Colin Cahoon or William Wang at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

The Commissioner is hereby authorized to charge any payments that may be due or credit any overpayments to CARSTENS & CAHOON, LLP Deposit Account 50-0392.

Respectfully submitted by:

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